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AS

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/130,593 08/07/98 GUST

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EXAMINER

IM22/0614

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ART UNIT

PAPER NUMBER

1772

DATE MAILED:

06/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Advisory Action

Application No.
09/130,593

Applicant(s)

GUST

Examiner

Sandra Nolan

Art Unit

1772



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jun 5, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on Jun 5, 2001. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search. (See NOTE below);
 - (b) ☒ they raise the issue of new matter. (See NOTE below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: See the enclosed attachment.

4. ☐ Applicant's reply has overcome the following rejection(s):

5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in separate, timely filed amendment cancelling the non-allowable claim(s).
6. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because:

7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
Claim(s) allowed: None
Claim(s) objected to: None
Claim(s) rejected: 1-16
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
11. ☐ Other: _____

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ATTACHMENT TO ADVISORY ACTION

Claims

1. Claims 1-25 are pending. Claims 1-16 are under consideration, claims 17-25 are held as non-elected pursuant to Applicant's election of claims 1-16 during the phone call of February 17, 2000 (See section 4 of the Office Action of March 2, 2000, Paper No. 4).

Rejections Maintained

2. The 35 USC 103 rejection of claims 1-16 as unpatentable over Heine (US 5,874,170) in view of Krause (US 5,958,532), as recited in section 6 of Paper No. 4 and repeated in section 3 of the Final Rejection of November 21, 2000 (Paper No. 7), is maintained for the reasons of record.

Comment re: the Proposed Amendment

3. The paragraph numbers used here correspond to the section numbers on the enclosed Advisory Action, form PTO 303.

New Matter (par. 3(a))

4. The phrase that Applicant proposes to add to the end of claim 1, if entered, would render the claims subject to a new matter rejection. The Examiner has not found support for the added references to (1) chemical and morphological changes and to (2) the non-necessity for the user of intermediate component in the application as originally filed.

OK

Not supported.

OK

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New Issues (par. 3(b))

5. The proposed language, if entered into claim 1, would raise new issues since the limitations (1) and (2) *supra* were not considered earlier.

No Reduction or Simplification of Issues (par. 3(c))

6. The proposed language, if entered into claim 1, would not reduce or simplify the issues on appeal because limitations (1) and (2) *supra* would have to be addressed on appeal.

Response to Arguments

7. Applicant's arguments filed in the response of June 5, 2001 (Paper No. 9) have been fully considered but they are not persuasive.

Except for summaries of the rejection and descriptions of the references, virtually every other comment made in the "Remarks" section of Paper No. 9 deals with the new language that Applicant proposed to insert into claim 1. Since entry of that language would render the claims subject to a new matter rejection, the new language will not be entered.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sandra M. Nolan, whose telephone number is (703) 308-9545. The examiner can normally be reached on Monday through Thursday from 6:30 am to 4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (703) 308-4251. The fax phone number for the organization where this application is assigned is (703) 305-5408. The telephone number for the receptionist is (703) 308-0661.



SMN/smn

June 12, 2001

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